

TOWN OF LAMOINE

DRAFT Minutes of Planning Board Meeting

August 13, 2014

Lamoine Consolidated School

Planning Board Members

Present: Holt, Bamman, Donaldson, Tadema-Wielandt, Fowler, Legere (alt)

Code Enforcement Officer

Present: M. Jordan

Members of the Public

Michael Keene, Jackie Gatcomb, Paul MacIntyre, Barry Baach, Bruce Gillett, S. Salsbury, T. Gott, Lynn Scheiller, Catherine de Tuede, David Mouland

Members of the Press - None

1. Chair Holt called the meeting to order at 7:03 p.m.

2. Consideration of Minutes

Bamman (Tadema-Wielandt) moved to approve the minutes of the July 8 2014 meeting as amended. **Approved 5-0.**

3. Code Enforcement Officer's Report

a. Permits Issued – Report accepted without comment

b. Enforcement Actions

Holt asked that the report of Enforcement Actions be corrected to indicate that four of the nine gravel operations listed are subject to the Consent Agreement between the Board of Selectmen and an operator. These are: J. W. Goodwin (M1 L75), MacQuinn, Inc. (M9 L13), MacQuinn, Inc. (M20 L12), and MacQuinn, Inc. (M3 L31,33). The remaining five operations continue to be in violation and should be marked “unresolved”.

4. Conservation Commission – No report

5. Old Business

Item 5a (Letter to Selectmen) was moved down the agenda in order to accommodate members of the public who were present.

b. Gravel Permit – Michael Keene (Map 4 Lot 41-A) Completeness Review

The Board conducted a full completeness review, given the number of requirements found missing at the first review June 11. All information was found to be present, with the exception of 2a8c, documentation of water quality. The shallow water table over extensive ledge under the site raises questions about obtaining valid water quality samples. The Board agreed to

waive this application requirement and asked that Mr. Keene's engineer attend the next meeting for discussion of the matter.

Mr. Keene was informed that the Board cannot review the application until the application fee is paid. He was further informed that the acreage of the pit (listed as 8.2 acres) appears to be measured from the previous setback line and that it should be measured from the current 100' setback line (which would reduce the size of the pit somewhat). Mr. Keene was asked to notify the Planning Board by the Public Hearing if he elects to change the acreage of the pit.

Holt declared the application complete. A Public Hearing was set for September 2, 2014 at 6:30 p.m. at the Town Hall.

c. Notice of Appeals Board Decision on Gott appeal of the Planning Board's site plan review decision.

Holt summarized the Appeals Board decision (June 4, 2014) and informed the Planning Board that it has no further recourse in this matter. The Appeals Board refused on July 14, 2014 to reconsider its June 4 vote, as requested by the Planning Board.

Discussion ensued regarding apparent irregularities in the procedures followed by the Appeals Board suggesting that it had conducted its own de novo assessment of the Gott proposal. Donaldson questioned whether the Appeals Board had considered the requirement that the removal of 70,000 cubic feet of material triggers the need for a Gravel Extraction permit. The Appeals Board apparently did not discuss this issue as the hearing pertained only to the Site Plan Review decision. Donaldson suggested that this development continues to require a Gravel Extraction permit.

Holt stated that he will alter the conclusion of the Planning Board's review of the application to read "permitted" instead of "denied" and append a note indicating that this was the decision of the Appeals Board.

d. Appeals Board – Harold MacQuinn, Inc. representative's meeting with the Appeals Board concerning the Planning Board's denial of site plan review and gravel permits (Map 3 Lots 31 & 33). See Draft minutes of Appeals Board Meeting July 14, 2014.

Board members expressed concern about two aspects of the MacQuinn appeal. First, the procedural irregularities in the Appeals Board's consideration of the earlier Gott appeal have not been examined and, if necessary, corrected; these stand to be repeated in the MacQuinn appeal. Second, the attorney for MacQuinn stated to the Appeals Board that he has filed a complaint in Superior Court against two members of the Planning Board for, in the words of the Appeals Board's minutes, "possible illegal Planning Board meetings, bias, and conflicts of interest". Board members were concerned that the town has been silent regarding this action to date and wants clarification on the legal standing and support for its members.

Fowler (Bamman) moved that the Planning Board request permission of the Select Board to consult with the Town Attorney about these two matters

to a) clarify the proper role and procedures of the Appeals Board pertaining to hearing appeals under the Site Plan Review and under the Gravel Extraction Ordinance; and b) ascertain the manner in which the Town will represent Planning Board members in any court matters arising from the MacQuinn decision. Holt will present these requests.

6. New Business

a. Waiver requests for Road Opening Permits for multiple entrances.

i. Barry Balach (7 Lorimer Rd, Map 16 Lot 26-1)

Folwer recused himself from this matter as he has performed work for the applicant. Legere will stand in.

Mr. Balach has already constructed a second entrance, having been issued a second Road Opening Permit in error by the Road Commissioner. Mr. Balach explained that he needed the second opening in order to install a culvert to allow him to store his boats, coach, and other vehicles in a u-shaped drive.

The Board discussed criteria used by the Maine Department of Transportation (Chapter 299) in making decisions of this sort. (Lamoine's Building and Land Use Ordinance requires that the town follow the state's procedures.) The major issue in approving a second entrance is safety; state guidelines require that second entrances be placed further from a first entrance if the speed limit on the approach road is higher. Holt read from the state regulations and noted that if the speed limit on the road is under 35 mph, there is no minimum separation distance between the two entrances. If the speed limit is 45, the minimum separation is 265 feet.

There is no speed limit on Lorimer Rd, but it is gravel and is not a through road. Tadema-Wielandt asked how many times each day the applicant turned off Lorimer Road onto the second entrance. Balach answered, two or three times. The lines of sight from both entrances are acceptable.

Donaldson (Legere) moved to waive the single-entrance requirement for this property. **Approved 5-0.**

ii. David Mouland (227 Buttermilk Road, Map 6 lot 24-1)

Mr. Mouland's property has 206 feet of road frontage on the Buttermilk Rd. He seeks a second entrance in order to install a road that will give him access to the back portion of his property in the event that he might want to build there. The CEO reported that lines of sight from the current entrance and the possible future entrance are "400 feet" as required by the state. The speed limit on the Buttermilk Road is 45 m.p.h. and, under the state guidelines, would require at least 265 feet between two entrances. This is impossible on this lot. Discussion ensued regarding the permissibility of adding second entrance which might, in the future, be included in a right of way under a different ownership, thus making the current parcel non-conforming (ie., under 200' of road frontage). Questions were raised about the dimensions of the lot and the accuracy of the sketch provided by the applicant.

Holt averred that the Board is only being asked to waive the BLUO one-entrance requirement, leaving the decision whether to permit the second entrance to the Road Commissioner, not the Board. Holt (Tadema-Wielandt) moved to waive the single-entrance requirement for this property.

Approved, 3-2 (Tadema-Wielandt, Donaldson)

5d. Old Business

Violations of Gravel Permit Condition: Assessment of Monitoring Well data submitted by operators June 26, 2014.

Holt reviewed the history of nine gravel permits issued with a condition that monitoring wells be installed by May 1, 2014. No wells were installed by that date. Gravel operators engaged in deliberations with the Select Board which resulted in a Consent Agreement between the town and two operators regarding four of the nine pits. (See 3b above.)

Two gravel operators have installed new monitoring wells: R.F. Jordan, Inc. (Map 3 Lot 4) and John W. Goodwin, Inc. (Map 4 Lot 41-1). The Board reviewed elevation and water quality data for these wells. Holt (Bamman) moved to find that R.F. Jordan, Inc. and John W. Goodwin, Inc. have complied with the condition placed on the permits for these pits and thus can continue operations. **Approved, 4-0-1 (Fowler abstaining)**

The remaining three pits are operated by Harold MacQuinn, Inc.: Map 7, Lot 7 (Jones); Map 7, Lot 9 (Beal); and Map 3, Lots 42 & 43-1 (Asher). No new wells have been installed as required in the permit condition. MacQuinn's agent (Summit Environmental) submitted water data from samples taken from existing 2 or 4 inch pvc pipes with openings that are unsecured. Board members questioned whether these actions met the requirements of the condition, both with regard to well installation and to obtaining a valid sample of water for quality testing. Holt read the ordinance's definition of Monitoring Well ("...a well installed at sufficient depth to permit measurement of the average seasonal high water table and of sufficient capacity to permit withdrawal of acceptable water samples for analysis. A piezometer is an example of a satisfactory monitoring well.")

Salsbury noted repeatedly that the samples had been drawn and analyzed by a reputable engineering firm. Board members wondered what the "industry standard" is for monitoring wells and water quality testing. Board members asked Salsbury why his client had not drilled monitoring wells as required; he answered that it was the hydrologist's opinion that the existing wells were sufficient. Tadema-Wielandt indicated that he would like to hear from an hydrologist on this matter. Salsbury stated that M. Deyling from Summit Environmental will be attending the next meeting.

Holt suggested that the Board consult with Robert Gerber about "the industry standard" and proper methods for well installation and water quality sampling. The Board agreed that we should contact Mr. Gerber.

Harold MacQuinn, Inc. remains out of compliance with the permit condition for the three pits.

7. Other Public Matters - None

8. Ordinance Matters

The Board took up the Letter to the Select Board regarding gravel ordinance revision (listed under Old Business, 5a). Donaldson reported that he had not sent the letter offering the Board's assistance to the Select Board as, in his opinion, it made better sense to send specific suggestions to them. He then presented three suggestions which he and Fowler had discussed and asked that the Board consider them for possible amendments to the Gravel Ordinance. The Board briefly discussed the suggestions and decided to hold an ordinance development workshop September 16 at 6:30 p.m. at a site to be set by the Chair.

The Board asked Donaldson to write a letter to the Board of Selectmen offering the Board's assistance in thinking about amendments to the Gravel Ordinance and reporting on the plan to hold a workshop in September.

9. Next Meetings:

Public Hearing, M. Keene Gravel Permit Application Sept 2, 2014 6:30 Town Hall

Regular Meeting, Sept 2, 2014, following the public hearing, Town Hall
Ordinance Workshop, Sept. 16, 2014, 6:30 Site to be announced

10. Adjourned at 9:12 p.m.

Respectfully Submitted,

Gordon Donaldson, Secretary